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11.1.1 Planning Director

A. Designation of Planning Director as Administrative Official

Pursuant to KRS 100.271, the Director of Jefferson County Planning and Design Services (or successor agency) is designated as the principal administrative official for the implementation and enforcement of regulations contained in this Code. Unless specifically stated to the contrary, the term "Director" or "Planning Director" shall include his or her designees.

B. General Functions, Powers and Duties

1. Written Records – For purposes of KRS 61.870 et seq., the Planning Director shall serve as the custodian of official records.
2. Files and Applications - The Planning Director shall be responsible for the receipt, review for completeness and substantial compliance, official acceptance, and maintenance of current and permanent files, applications and records for all permits and approvals required by this Code and including but not limited to Zoning and Form District Map Amendments, Conditional Uses, Subdivision Plats, and Development Plans. For purposes of beginning the notice and review process, the Planning Director shall determine when all necessary applications and supporting documents are complete and in sufficient detail.
3. Other - The Planning Director shall perform such other duties and functions as are required by the provisions of this Chapter.

11.1.2 Technical Review Committee

A. Establishment of Technical Review Committee

There is hereby established a Technical Review Committee. The word "Committee" when used in this Part shall be construed to mean the Technical Review Committee. The structure, membership, and duties may be modified by the Planning Commission.

B. Committee Membership and Officers

The Committee shall be composed of members representing departments and agencies (and their successor agencies) responsible for reviewing land development proposals. The Planning Commission, at the request of the Planning Director, may modify the makeup of the Committee. Membership includes but is not limited to the following:

1. Core Members
 - a. Louisville Metro Planning and Design Services
 - b. Louisville and Jefferson County Metropolitan Sewer District
 - c. Louisville Metro Departments of Public Works
 - d. Louisville Metro Department of Inspections, Permits and Licenses

2. Full Members
 - a. Kentucky Department of Transportation
 - b. Louisville Metro Historic Landmarks and Preservation District
 - c. Metropolitan Development Authority
 - d. Jefferson County Environmental Health and Protection
 - e. Louisville Metro Air Pollution Control District
 - f. Fire Department having jurisdiction
3. Advisory Members
 - a. Louisville Gas and Electric
 - b. Louisville Water Company
 - c. Cable Utilities
 - d. Kentucky Division of Water
 - e. Bell South
 - f. Natural Resources Conservation Service (NRCS)
 - g. Transit Authority of River City (TARC)
- C. Officers and Committees

The Chairman of the Committee shall be the Planning Director. Other offices and subcommittees to carry out the purposes of this Chapter, may be appointed by the Planning Director as needed.
- D. General Functions, Powers and Duties
 1. Application Review

The Committee may review applications and make recommendations to appropriate approval authorities regarding approval, denial and, where applicable, conditions and safeguards to be placed upon the approval of applications required by this Chapter including, but not limited to the following:

 - a. Subdivisions
 - b. Conditional Uses
 - c. Zoning Map and Form District Map Amendments
 - d. Development Plans
 - e. Street Closings and Street Name Changes
 - f. Other Applications referred by the Planning Commission, Board of Zoning Adjustment or their Committees for review and resolution of technical issues

g. Other Applications referred to the Committee by the Planning Director

2. Other Duties

The Committee shall carry out such other duties as may be assigned to it from time to time.

11.2.1 Major Subdivisions

- A. Subdivisions submitted in conjunction with a proposal for a Zoning or Form District Map Amendment

A preliminary subdivision plan submitted in conjunction with a proposed Zoning District Map Amendment which would establish an R-R, R-E, R-1, R-2, R-3, R-4, or R-5 Zoning District which would create a single-family residential subdivision, shall be accepted in lieu of a general district development plan. Preliminary subdivision plans submitted in conjunction with a proposed Zoning or Form District Map Amendment shall follow the review procedure for a Zoning or Form District Map Amendment.

- B. Subdivision proposals not requiring a Zoning or Form District Map Amendment

Subdivision proposals which do not require a Zoning or Form District Map Amendment shall follow the review process established in **Chapter 7**, Subdivision Regulations. The Technical Review Committee process defined in **Chapter 7** shall satisfy the Category 3 Review Process required for subdivisions that meet the threshold established in the form district regulations.

11.2.2 Minor Subdivisions

Minor subdivision proposals shall follow the review process established in **Chapter 7**, Subdivision Regulations. Minor subdivision proposals requiring a Zoning or Form District Map Amendment shall follow the review procedure for a Zoning or Form District Map Amendment.

11.3.1 General

Review of Planned Developments (e.g. PVD, TNZD and PTD) shall follow the review procedures outlined in the regulation establishing the planned development district.

11.3.2 Concurrent Review of Form District Map Amendment

In the event that a Zoning District Map Amendment to a Planned Development District also requires a Form District Map Amendment, the applicant shall so indicate at the time of Zoning District Map Amendment application and the Zoning District Map Amendment application materials shall be deemed sufficient for initial review of the Form District Map Amendment.

11.3.3 Relationship to Form District Design Standards

In addition to the standards established in the Planned Development District, development must also comply with the standards established in the applicable Form District. In the event of a conflict of standards, the standards of the Planned Development District shall apply.

11.4.1 Origination of Application**A. Zoning and/or Form District Map Amendments**

Property owners, legislative bodies with jurisdiction and the Planning Commission may initiate zoning and/ or form district map amendments. All proposals for zoning and/or form district map amendments shall be referred to the Planning Commission for review and recommendation prior to legislative action on the proposed amendment.

B. Zoning and/or Form District Map Amendments not Associated with Specific Development Proposals

Legislative bodies with jurisdiction and the Planning Commission may initiate zoning and/ or form district map amendments not associated with a specific development proposal. Such amendments shall, in cases where the applicant has no ownership interest in the subject property, be exempt from the development plan and binding element requirements of this Part. Notice for hearings to consider zoning or form district map amendments not associated with specific development proposals shall be given in accordance with KRS100.

NOTE: Section B addresses what is commonly known as the area-wide rezoning process. Other parties who want to change zoning or form districts under the provisions of section B should work through Division staff and/or their legislative body representative.

11.4.2 Pre-Application

Prior to formal application for Zoning District Map Amendments or Form District Map Amendments the applicant or applicant's agent shall file a plan and supporting materials with the Planning Director. The materials to be submitted shall be determined by the Planning Director. The Planning Director shall review the materials submitted and provide the applicant with a report addressing, as appropriate, the following issues:

A. Comprehensive Plan Compliance**B. Zoning and Form District and Subdivision Regulation impacts****C. Site characteristics that may have a significant impact on the proposed development**

No formal pre-application conference is required unless specifically requested by the applicant or Planning Director.

NOTE: Pre-application required but conference is optional.

11.4.3 Neighborhood Meeting Requirement

Prior to filing a change in zoning request and after the pre-application conference (if one was conducted) a letter shall be sent from the developer/owner stating that a pre-application has been filed with PDS and announcing a public meeting held by developer/owner to discuss the proposed project. The letter shall be mailed no less than 10 days prior to the neighborhood meeting. The letter shall be sent to:

- 1st and 2nd tier property owners,
- neighborhood groups who have registered with PDS to receive notice of development actions,
- 2nd through 6th class city if the development is located within such a municipality,
- Metro Council district representative; and
- PDS staff.

On receipt of said letter at the PDS office the pre-application file shall no longer be confidential. The neighborhood meeting shall be held no less than seven (7) days and no more than 90 days prior to the filing of an application. At time of filing a change in zoning request, the applicant shall provide a summary of a public meeting between the applicant and the parties listed above. The summary shall include a list of those invited, those in attendance and a summary of the issues discussed.

11.4.4 Application

Submission Requirements

Applications for Zoning or Form District Map Amendments shall be signed by the property owner or his/her agent and filed with the Planning Director in accordance with these regulations and the Planning Commission By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of the Commission. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for Zoning or Form District Map Amendments:

- A. A "Demonstration of Appropriateness" document which addresses as applicable:
 - 1. One of the following;
 - a. How the proposed amendment conforms to the Comprehensive Plan; or,
 - b. Why the existing zoning or form district classification is not appropriate and the proposed zoning or form district is appropriate; or,
 - c. What major changes of an economic, physical, or social nature, not anticipated by the Comprehensive Plan, have occurred in the vicinity of the proposed change substantially altering the basic character of the area; and,

2. How utilities and essential public services will be provided to the property in question; and,
 3. The anticipated time period in which implementation of the proposed uses will be initiated provided the amendment is approved
- B. A development plan of sufficient detail to demonstrate to the Planning Commission the character and objectives of the proposed development and the potential impacts of the development on the community and its environs. In instances where a general development plan is submitted, the Planning Commission may require submission of a detailed development plan prior to issuance of site disturbance and building permits. In certain instances, a preliminary subdivision plan will satisfy the requirements for a general or detailed development plan. These circumstances are identified in Part 2 of this Chapter. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.
- C. Technical studies or reports required by this Land Development Code including but not limited to air quality, traffic, historic and cultural resource, geologic, hydrologic, and hydro-geologic.
- D. Upon receipt of a complete application, as determined by the Planning Director, staff of Planning and Design Services shall cause notice of the application to be given. Not less than ten (10) calendar days prior to initial consideration of an application by either the Commission or a Committee thereof, notice of the application shall be given to first and second tier adjoining property owners. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.

11.4.5 Public Hearing¹

- A. Hearing Required – The Planning Commission shall hold at least one public hearing on each application for a Zoning or Form District Map Amendment. Notice of the hearing shall be given as specified in KRS100. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.

¹ See appendix 1C for changes to this section in effect within the City of Middletown.

- B. Submission of Materials – No less than fourteen (14) calendar days prior to an original or continued hearing date set by the Commission, the applicant shall submit original or revised development plans, traffic and air quality, market studies, proposed binding elements, noise studies, lighting studies, geotechnical or other environmental studies, and any other studies or reports prepared by an expert and the findings of which the applicant intends to present at the which have been prepared in response to comments received during the review process. Failure to submit these items within the required time frame shall be considered grounds for postponing the hearing or deferring action on the proposal. The applicant shall be responsible for the cost of additional notice resulting from failure to submit items within the required time frame. This section does not preclude the applicant from presenting, at the hearing, changes to the plan in response to concerns of the neighbors or Commission. Other interested parties (including but not limited to neighborhood organizations, adjoining property owners, etc.) submitting studies or reports prepared by an expert and proposed binding elements for review by the applicant and Planning Commission shall submit these materials no less than fourteen (14) calendar days prior to an original or continued hearing date set by the Commission.
- C. Hearings shall follow the procedures established in the Planning Commission By-Laws and Procedures.
- D. Following the public hearing, the Planning Commission shall make a recommendation regarding the appropriateness of the Zoning District or Form District Map Amendment to the legislative body with zoning authority over the property in question. In addition, the Planning Commission shall by separate vote, approve, reject or defer action on the development plan submitted and considered in conjunction with the proposed Zoning or Form District Map Amendment..²

11.4.6 Legislative Action

- A. The legislative body having zoning authority over the property in question shall make a determination regarding the proposed Zoning or Form District Map amendment.
- B. Additional Requirements by Legislative Body – The legislative body, at its discretion, may include additional binding elements on the development plan that the legislative body deems appropriate for the welfare of the public. If the legislative body requires development plan or binding element changes, the applicant shall submit to the Planning Director a development plan showing the changes required by the legislative body within 14 days of final action by the legislative body. No permits shall be requested for any land disturbing activity until such plan is submitted .
- C. The legislative body shall notify the Planning Commission of its action relative to the Zoning or Form District Map amendment; associated binding elements; and, the accompanying development plan.

² See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

11.4.7 Plan Certain Development³**A. Designation of Binding Elements**

The Planning Commission or Legislative Body with zoning authority shall designate, at the time of approval or amendment of any development plan, those elements, provisions and restrictions of the approved plan, including a time period for development plan expiration, that shall be an integral and permanent part of the development plan and thereby binding on the use and development of the subject property. Binding elements approved as part of any development plan shall be applicable to all development plans subsequently prepared for a subject property, and shall be binding upon the future use and development of said property unless specifically waived by the Planning Commission.⁴

B. Agreement to Binding Elements

The filing of an application for any Zoning or Form District Map amendment, except those filed under the provisions of Section 11.4.1B, shall constitute an agreement by the owner and applicant, their heirs, successors and assigns that if the Zoning or Form District Map amendment is enacted by the legislative body having zoning authority over the property in question, development and building permits for improvement of any such property shall be issued only when in conformance with the binding elements and a development plan conforming to those regulations adopted by the Planning Commission or legislative body for said property. A subsequent Zoning or Form District Map amendment enacted pursuant to an application which is exempt from the requirement of this section shall not invalidate any such agreement.

C. Binding Elements Run with the Land

The binding elements of a general or detailed development plan granted approval by the Planning Commission shall run with the land and be binding on the owner and applicant, their successors, heirs, or assigns, unless otherwise amended or released by the Planning Commission in accordance with its By-laws, Policies and Procedures.

D. Enforcement of Binding Elements

Building permits for improvement of any property subject to binding elements shall be issued only in conformance with the binding elements of a district development plan conforming to these regulations and approved by the Planning Commission. Binding elements shall be strictly complied with and shall be enforceable in accordance with KRS100, local ordinances and Planning Commission Policy.

³ See Appendix 1C for changes to this section in effect within the City of Middletown.

⁴ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

E. Amendments to Binding Elements and Revised District Development Plans

1. Review Procedure

Amendment to any binding element of an approved development plan, including any development plan expiration date, shall require Planning Commission approval. Review of amendments to binding elements shall follow Category 3 Review Procedures (Section 11.6.6), except notice also shall be given to those who spoke at a Planning Commission public hearing.

2. Scope of Planning Commission Review

The Planning Commission shall consider, but not be limited to, the following factors in review of a request to amend a binding element:

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;
- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;
- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;
- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;
- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;
- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

3. Delegation to Planning Director

Unless otherwise specified in these regulations or at the time of binding element adoption, the Planning Director may approve modifications to binding elements relating to changes in building design and layout and site design and layout so long as such changes are in conformance with the design requirements of this code. In addition, the Planning Director may approved changes in binding elements related to increase or reduction of square footage of the development so long as the increase does not exceed 25% or meet or exceed the threshold established in the applicable Form District regulation for completing the Community Design Review process.

In cases in which the Planning Director has reason to question whether the request to amend the binding element complies with any of the items in Section 11.4.6E2 above or any other provision of the Land Development Code, the Planning Director may forward the request to the Planning Commission, or committee thereof, for review and action.

F. Detailed District Development Plans

1. Review Procedure

Detailed district development plan review shall require Planning Commission approval. Review of detailed district development plans shall require notice to adjoining property owners, notice to those registered on Neighborhood Notice List and notice to those who spoke at Planning Commission public hearing. Notice shall be given at least 10 calendar days prior to review of the development plan by the Planning Commission or committee thereof.

2. Scope of Planning Commission Review

The Planning Commission shall consider, but not be limited to, the following factors in review of a detailed district development plan:

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic site;
- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;
- c. The provisions of sufficient open space (scenic and recreational) to meet the needs of the proposed development
- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;
- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;
- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code.

11.5A.1 General Provisions**A. Conditional Use Permits Requested in Conjunction with Zoning or Form District Map Amendments**

Applicants for Zoning or Form District map amendments may elect, at the time of application, to have the Conditional Use Permit(s) for the same development heard and decided by the Planning Commission. In such cases, the Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251. For purposes of this section only, the time of application for the map amendment shall correspond to the time of legal notice for the hearing on map amendment.

Hereafter, references to the Board of Zoning Adjustment shall also include the Planning Commission when the Commission is considering Conditional Use Permit(s) or Variances. Determinations on the issuance of Conditional Use Permits shall be made in accordance with the provisions of KRS 100.237

B. Considerations for Review of Conditional Use Permits

In its review of Conditional Use Permit applications, the Board shall include, at a minimum, consideration of the following factors:

1. The purpose and intent and all other requirements of this code.
2. Whether the proposal is consistent with the applicable policies of the Comprehensive Plan.
3. The compatibility of the proposal with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc.
4. Whether necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. will be adequate to serve the proposed use.
5. Any other matter that the Board may deem appropriate and relevant to the specific proposal.

C. Term of Permit Approval

The Permit must be exercised within one year of the date of issuance, or other time frame as may be specified by the Board. However, upon written application, filed at least thirty calendar days prior to said expiration date, the Board may, for cause shown, renew such Conditional Use Permit for one period of up to one year. No less than fourteen (14) calendar days prior to Board consideration of an application for extension, staff of Planning and Design Services shall cause notice of the application to be given to those persons who appeared at the hearing at which the current expiration date was set. If the Permit expires, no new or renewal permit shall be issued except through a new original application in compliance with all requirements for such applications.

D. Requirement to Follow Approved Development Plan

A Conditional Use Permit shall be approved only on the basis of conditions established by the Board to ensure that the proposed conditional use will not adversely affect the use of surrounding properties, and the development plan approved by the Board. The permit shall be valid only for the location and area shown on the approved development plan which shall include a floor plan, if applicable. All construction and operations must be conducted in accordance with the approved development plan and conditions attached to the Conditional Use Permit. The Planning Director is authorized to approve minor development plan modifications consistent with the intent of the approved Conditional Use Permit.

E. Request for Modification

At the initiation of the Planning Director or owner of the property subject to the Conditional Use Permit, any Conditional Use may be reconsidered in accordance with this Part. The Board shall determine the need for a new public hearing. Upon consideration of the request to modify the Conditional Use Permit, the Board may apply additional conditions.

11.5A.2 Pre-Application

Prior to formal application for a Conditional Use Permit, the applicant or applicant's agent shall file a plan and supporting materials with the Planning Director. The materials to be submitted shall be determined by the Planning Director. The Planning Director shall review the materials submitted and provide the applicant with a report addressing, as appropriate, the following issues:

- A. Comprehensive Plan Compliance
- B. Zoning and Form District and Subdivision Regulation impacts
- C. Site characteristics that may have a significant impact on the proposed development

NOTE: Pre-application required but conference is optional.

No formal pre-application conference is required unless specifically requested by the applicant or Planning Director.

11.5A.3 Neighborhood Meeting Requirement

Prior to filing a conditional use permit request and after the pre-application conference (if one was conducted) a letter shall be sent from the developer/owner stating that a pre-application has been filed with PDS and announcing a public meeting held by developer/owner to discuss the proposed project. The letter shall be mailed no less than 10 days prior to the neighborhood meeting. The letter shall be sent to:

- 1st and 2nd tier property owners,
- neighborhood groups who have registered with PDS to receive notice of development actions,
- 2nd through 6th class city if the development is located within such a municipality,
- Metro Council district representative; and
- PDS staff.

On receipt of said letter at the PDS office the pre-application file shall no longer be confidential. The neighborhood meeting shall be held no less than seven (7) days and no more than 90 days prior to the filing of an application. At time of filing a conditional use permit request, the applicant shall provide a summary of a public meeting between the applicant and the parties listed above. The summary shall include a list of those invited, those in attendance and a summary of the issues discussed.

11.5A.4 Application

- A. Applications for Conditional Use Permit shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed with Planning and Design Services in accordance with these regulations and the Board of Zoning Adjustment By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of Planning and Design Services. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for Conditional Use Permit:
1. A "Demonstration of Appropriateness" document which addresses as applicable the items listed in Section 11.5A.1.B above.
 2. A development plan of sufficient detail to demonstrate to the Board the character and objectives of the proposed development and the potential impacts of the development on the community and its environs.

11.5A.5 Public Hearing

- A. Hearing Required – The Board shall hold at least one public hearing on each application for a Conditional Use Permit as required by KRS 100. Notice of the hearing shall be given as specified in KRS 100. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.

- B. Submission of Materials – In addition to those materials required at the time of application submission, no less than fourteen (14) calendar days prior to an original or continued hearing date before the Board, the applicant shall submit original or revised development plans, studies, reports, etc. which have been prepared in response to comments received during the review process. Failure to submit these items within the required time frame shall be considered grounds for postponing the hearing or deferring action on the proposal. This section does not preclude the applicant from presenting, at the hearing, changes to the plan in response to concerns of the neighbors or Board.
- C. Hearings shall follow the procedures established in the Board's By-Laws and Procedures.
- D. Based on the application, the requirements of this Chapter and the recommendations of the staff and testimony at the hearing, the Board shall prepare findings of fact and issue a denial or an authorization, with or without conditions as it deems necessary to assure that the proposed conditional use will not adversely affect the use of surrounding properties or unreasonably interfere with the use and enjoyment of such properties.

11.5A.6 Revocation of Conditional Use Permit

The Board shall have the power to revoke Conditional Use Permits for noncompliance with listed requirements or attached conditions. Furthermore, the Board shall have a right of action to compel the removal of offending structures or uses at the cost of the violator and may have judgment in personam for such cost.

11.5B.1 General Provisions

- A. Variances requested in Conjunction with Zoning or Form District Map Amendments

Applicants for Subdivisions and Zoning or Form District map amendments may elect, at the time of application, to have the Variance(s) for the same development heard and decided by the Planning Commission. In such cases, the Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251. For purposes of this section only, the time of application for the map amendment shall correspond to the time of legal notice for the hearing on map amendment.

Hereafter, references to the Board of Zoning Adjustment shall also include the Planning Commission when the Commission is considering Variance(s)

- B. Considerations for Variances

Determinations on the granting of Variances(s) shall be made in accordance with KRS 100.241 through 100.251. In its review of Variance applications, the Board shall consider the following factors:

1. The purpose and intent and all other requirements of this code;
2. Whether the requested variance will adversely affect the public health, safety or welfare, will alter the essential character of the general vicinity, will cause a hazard or a nuisance to the public, or will allow an unreasonable circumvention of the requirements of the zoning regulations.
3. Whether the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
4. Whether the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and,
5. Whether the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

B. Requirement to follow approved Development Plan

A variance shall be approved only on the basis of the development plan approved by the Board and shall be valid only for the location and area shown on the approved development plan which shall include a floor plan if applicable. All construction and operations must be conducted in accordance with the approved development plan and conditions attached to the Variance. The Director shall specify the contents and format of the development plan. Such specifications shall be available through Planning and Design Services.

11.5B.2 Application

- A. Applications for Variance shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed Planning and Design Services in accordance with these regulations and the Board of Zoning Adjustment By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of Planning and Design Services. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for Variance;
1. A "Demonstration of Appropriateness" document which addresses as applicable the items listed in Section 11.5B.1B above. To the extent that the items in 11.5B.1 are adequately addressed on the application, they do not have to be addressed in a separate document.

2. A development plan of sufficient detail to demonstrate to the Board the character and objectives of the proposed development and the potential impacts of the development on the community and its environs.

11.5B.3 Public Hearing

- A. Hearing Determination – The Board shall determine those circumstance under which a public hearing shall be required. Notice of the hearing, if required, shall be given as specified in the By-Laws and Policies of the Board or by State Statute. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.
- B. Submission of Materials – In addition to those materials required at the time of application submission, no less than fourteen (14) calendar days prior to an original or continued hearing date before the Board, the applicant shall submit original or revised development plans, studies, reports, etc. which have been prepared in response to comments received during the review process. Failure to submit these items within the required time frame shall be considered grounds for postponing the hearing or deferring action on the proposal. The cost for additional notice shall be borne by the applicant. This section does not preclude the applicant from presenting, at the hearing, changes to the plan in response to concerns of the neighbors or Board.
- C. Hearings shall follow the procedures established in the Board's By-Laws and Procedures.
- D. Based on the application, the requirements of this Chapter; the requirements of KRS 100.241 through 100.251; and the recommendations of the staff and testimony at the hearing, the Board shall prepare findings of fact and issue a denial or an approval, either in whole or in part, with or without conditions.

11.6.1 Development Plan Categories

For purposes of review procedure, developments are divided into three distinct categories based upon the size thresholds established in the Form District regulations applicable to the location of the proposed development. The categories are:

- A. Category 1 - Development proposals which do not meet the size threshold for applicability of Form District design standards.
- B. Category 2 - Development proposals which meet the minimum size threshold for applicability of Form District design standards but do not meet the size threshold for completing the Community Design Review process.
- C. Category 3 - Development proposals which meet the size threshold for completing the Community Design Review Process.

The review process for each category of development is outlined in the sections below. Initial or revised submissions shall follow the procedure determined by the size of the new or additional development proposed unless a higher level of review is required by another section of this code.

NOTE: Plans filed before the effective date of the LDC shall be reviewed for compliance with the regulations in effect at the time of filing. See **Section 1.1.8**

11.6.2 Category 1 Review Procedure¹

Prior to issuance of building permits, the local building official shall assure the plan is in compliance with the applicable provisions of this code and all binding elements and conditions of approval². These provisions include but are not limited to: allowable uses; yard and setback requirements; height; landscaping; environmental assessment; and parking. In cases in which the building official has reason to question the development plan's compliance with any provision of the Land Development Code, applicable binding elements and conditions of approval, the building official may forward the development plan to the Planning Director for a review and action on the plan.

¹ See Appendix 1C for changes to this section in effect within the City of Middletown.

² See Appendix 1B for specific changes to this sentence in effect within the City of Jeffersontown.

11.6.3 Category 2 Review Procedure³**A. Application for Planning Director Approval**

Applications for Category 2 development approval shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed with Planning and Design Services. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of Planning and Design Services. Failure to submit all required material may result in delay of the application review. At a minimum, the application shall be accompanied by a development plan of sufficient detail to demonstrate to the Planning Director that the proposed development is in compliance with the applicable requirements of these regulations and any applicable binding elements or conditions of approval. The Planning Director shall approve the proposed development if it complies with the requirements of this code; associated binding elements, if any; and other applicable law. In cases in which the Planning Director has reason to question the development plan's compliance with any provision of the Land Development Code, applicable binding elements and conditions of approval, the Director may forward the development plan to the Planning Commission, or designated committee thereof, for review and action on the plan.⁴

Note: Category 2 procedure outlined within PDS information handout

B. Issuance of Building Permits

In addition to those materials required by the appropriate building code, applications for permit for construction activity meeting the Category 2 thresholds shall be accompanied by a development plan which has been approved by the Planning Director. Building permits for Category 2 development shall be issued only in conformance with the development plan approved by the Planning Director and any applicable binding elements or conditions of approval of a district development plan.⁵

³ See Appendix 1C for changes to this section if effect within the City of Middletown.

⁴ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

⁵ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

11.6.4 Category 3 Review Procedure⁶**A. Commission Approval Required**

In addition to those materials required by the appropriate building code, applications for permit for construction activity meeting the Category 3 thresholds shall be accompanied by a development plan, which has been approved by the Planning Commission under the Community Design Review Procedure outlined below. The Planning Commission may delegate this review process to a Committee of the Commission. The Technical Review Committee process defined in Chapter 7 shall satisfy the Community Design Review Process required for subdivisions that meet the threshold established in the form district regulations. In conjunction with its review of development proposals that require Conditional Use Permits or Variances, the Board of Zoning Adjustment is authorized to review and approved Category 3 reviews in accordance with this part.⁷

B. Community Design Review Process

1. Application Required - Applications for development plan approval shall be submitted on forms supplied by the department. Applications shall be signed by the property owner or his/her agent and filed with Planning and Design Services in accordance with these regulations and the Planning Commission By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of the Commission. Failure to submit all required material may result in delay of the application review.
2. Notice – Not less than 10 calendar days prior to the proposed review session, notice of the proposed development and its scheduled review shall be given to adjoining property owners. In addition, staff shall endeavor to assure that notice is given to all neighborhood groups who have registered to receive notice of development applications.

⁶ See Appendix 1C for changes to this section in effect within the City of Middletown.

⁷ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

3. Review Session – Review of and action on the proposal shall take place in a public meeting before the Planning Commission or Committee thereof. No less than ten (10) calendar days prior to an original or continued review session date, the applicant shall submit original or revised development plans, studies, reports, etc. which have been prepared in response to comments received during the review process. This section does not preclude the applicant from presenting, at the review session, changes to the plan in response to concerns of the neighbors, agency review staff or the Planning Commission. The Planning Commission or designated Committee shall approve the proposed development if it complies with the requirements of this code; associated binding elements, if any; and other applicable law.⁸

C. Issuance of Building Permits

In addition to those materials required by the appropriate building code, applications for permit for construction activity meeting the Category 3 thresholds shall be accompanied by a development plan which has been approved by the Planning Director. Building permits for Category 3 development shall be issued only in conformance with the development plan approved by the Planning Director and any applicable binding elements or conditions of approval of a district development plan.⁹

For example, if a site plan for a 300 unit apartment complex is approved under the Category 3 process, building permits for each 10 unit building may be issued without additional Category 3 review.

D. Multiple Phase Projects

Developments that are constructed in multiple phases shall not be required to undergo the Category 3 review procedure more than once. If a plan has been approved in accordance with this section, building permits for construction of portions of the approved development may be issued without additional Category 3 review.

11.6.5 Plan Certain Development Plans

Note: See section 11.4.6 Plan Certain Development

⁸ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

⁹ See Appendix 1B for specific changes to this paragraph in effect within the City of Jeffersontown.

11.7.1 Planning Commission Review of Staff Determinations¹

- A. Applicability – When the Planning Director, Director of Works or Local Building Official is authorized by this Land Development Code to take action on a proposal on behalf of the Planning Commission, such action may be appealed to the Planning Commission by filing an appeal no later than fourteen (14) calendar days after the date of the action. All actions which have not been appealed to the Planning Commission within fourteen (14) calendar days shall not be subject to further administrative review or appeal.
- B. Notice – Notice of the appeal shall be given to the applicant (if not the appellant) and all first tier property owners at least seven (7) calendar days prior to the meeting at which the Planning Commission will consider the appeal.
- C. Delegation to Committee – The Planning Commission may delegate the authority to consider and take final actions on appeals to its Land Development and Transportation Committee or other such Committee of the Commission duly created under the By-Laws of the Commission.

11.7.2 Planning Commission Review of Committee Determinations

- A. Applicability – When a committee of the Planning Commission takes action on a proposal on behalf of the Planning Commission, such action may be appealed to the Planning Commission by filing an appeal with the Department of Planning and Design Services no later than fourteen (14) calendar days after the date of the action. All committee actions which have not been appealed to the Planning Commission within fourteen (14) calendar days shall not be subject to further administrative review or appeal.
- B. Notice – Notice of the appeal shall be given to the applicant (if not the appellant) and all first tier adjoining property owners at least ten (10) calendar days prior to the meeting at which the Planning Commission will consider the appeal.

11.7.3 Board of Zoning Adjustment Review of Staff Determinations

- A. Applicability – Pursuant to KRS 100.257 and 100.261, the Board of Zoning Adjustment, shall hear appeals of determinations in the following areas:
 - 1. Written interpretations of the provisions of this code;
 - 2. An official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer.
- B. Procedure for Appeal

¹ See Appendices 1B and 1C for specific changes to this section in effect within the City of Jeffersontown and the City of Middletown respectively.

1. Application Required – Appeals shall be taken within thirty (30) days after the appellant or his agent receives notice of the action of the official by filing an Application for appeal in accordance with this Part. Applications for appeal shall be submitted on forms supplied by Planning and Design Services. Applications shall be signed by the person(s) seeking review of the staff determination or by their designated agent(s). Applications shall be accompanied by supporting materials determined appropriate by the Planning Director and by the appropriate fee.
2. Notice - Notice of the public hearing on the appeal shall be given in accordance with KRS Chapter 100.

11.7.4 Technical Review Committee Determinations

Actions of the Technical Review Committee regarding subdivision applications and other determinations may be appealed to the Land Development and Transportation Committee of the Planning Commission in accordance with the procedures established in **Chapter 7** (Subdivision Regulations) of this code.

11.7.5 Legislative Body Review of Commission Action on Development Plans (Not in effect within the City of Jeffersontown and the City of Middletown, see Appendices 1B and 1C respectively for details)

- A. Applicability – Planning Commission approval or denial of any development plan for developments except Category 1 developments (as defined in Section 11.6.1) may be reviewed by the legislative body having zoning authority over the property in question, if the legislative body determines that such a review is warranted. Any such review shall be conducted as a public hearing. Initial review of Planning Director actions on plans for Category 2 development shall be by the Planning Commission in accordance with Section 11.7.1.
- B. Initiation of Review - The owner(s) of the subject property or any aggrieved party may request a hearing before the legislative body by submitting a written letter to the appropriate legislative body stating the reason(s) why such a review is warranted. The legislative body with zoning authority over the subject site may initiate the review on its own by resolution. Such letter shall be filed with the appropriate legislative body or resolution adopted within fifteen (15) calendar days after the date the minutes of the Planning Commission are approved reflecting its action regarding said development plan. The legislative body shall forward a copy of said letter or resolution to the owner of the subject property, if the owner is not the applicant for the review. A copy of said letter or resolution shall also be forwarded by the legislative body to the Planning Commission.
- C. Notice – If the legislative body determines that a review regarding the development plan is warranted, it shall, by letter, notify the following of the date, time, place and subject of the public hearing, and of the right of the public to inspect the subject plans in the office of Planning and Design Services, and the right of the public to comment at the public hearing on the proposed development:
 1. The Planning Commission

2. All parties of record to any Planning Commission hearing previously held regarding the subject plan; and
 3. All owners of property adjoining the subject property or directly across the street from the subject property.
- D. Public Hearing – The public hearing shall include a presentation by a staff member of the Planning Commission stating the reason(s) for action. In addition, any applicant for review of the Planning Commission's action pertaining to the plan shall state why he/she believes the Planning Commission's action was not justified. The legislative body may hear any other such witnesses and review any other evidence at the hearing it deems appropriate.
- E. Legislative Action – If the legislative body, subsequent to the public hearing agrees with the Planning Commission's action, it shall so indicate by resolution. If the legislative body disagrees with the Planning Commission's action, it may adopt a resolution directing the Planning Commission to alter its action in accordance with whatever directions and conditions the legislative body so indicates. A copy of all such resolutions shall be forwarded, by the legislative body to the Planning Commission.
- F. Planning Commission Action – If the legislative body directs the Planning Commission by resolution to alter its action in a specified manner, the Planning Commission shall do so in accordance with said resolutions at its next regularly scheduled meeting. If the Planning Commission fails to comply, the alterations regarding the development plan specified by said resolutions shall become effective upon the adjournment of said meeting.

11.7.6 Judicial Review

Judicial review shall be taken in accordance with the provisions of KRS Chapter 100.

11.8.1 General

The Planning Commission may modify, reduce or waive those standards and minimum requirements established by this Land Development Code which cannot be modified through a dimensional variance. Use, conditional use, density and FAR standards established in **Chapter 2** shall not be modified by this process. Specific Chapter, Part or Section waiver procedures shall take precedence over the procedures established in this Part (e.g. – Parking Waiver procedure in **Chapter 9**). In conjunction with its review of development proposals that require Conditional Use Permits or Variances, the Board of Zoning Adjustment is authorized to modify, reduce or waive standards and minimum requirements of this Land Development Code in accordance with this part; however the Board is not authorized to grant parking waivers as defined in Section 9.1.16.

Note: Only site, building and structure design elements are subject to the waiver provisions of the LDC. Regulations that prohibit certain structures or activities (e.g. freestanding signs prohibited in certain form districts), and other non-design related standards (e.g. limit on hours of operation) may not be waived. (see note below for continuation of this text.

11.8.2 Application

A. Submission Requirements

Applications for waiver shall be signed by the property owner or his/her agent and filed with the Planning Director in accordance with these regulations and the Planning Commission By-Laws and Rules of Procedure. Applications shall be accompanied by supporting material determined appropriate by the Planning Director and by the appropriate fee. The list of required supporting materials shall be available from the offices of the Commission. Failure to submit all required material may result in delay of the application review. At a minimum, the following materials shall be submitted with all applications for waiver:

1. A justification document which addresses as applicable the following items:
 - a. How the proposed waiver conforms to the Comprehensive Plan and the intent of this Land Development Code;
 - b. Why compliance with the regulation is not appropriate and granting of the waiver will result in a development more in keeping with the Comprehensive Plan and this overall intent of this Land Development Code;
 - c. What impacts granting of the waiver may have on adjacent property owners;
 - d. Why strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant..
2. Unless determined by the Planning Director to be unnecessary, a general or detailed development plan of sufficient detail to demonstrate to the Planning Commission the character and objectives of the proposed waiver and the potential impacts of the waiver on the community and its environs.

For example, pursuant to LDC Section 4.4.5.H, a home occupation that accommodates customers, clients, or pupils on the site is not permitted to operate between the hours of 9 P.M. and 7 A.M. This standard is not related to design and, therefore, is not subject to a waiver. Planning and Design Services may provide a list of items that are eligible or ineligible for a waiver, said list may be modified by staff as interpretations are made

11.8.3 Notice

Following receipt of a completed application, staff of the Commission shall provide notice of the request for modification or waiver to first tier adjacent property owners and parties of record to any previous Planning Commission hearing on the proposal now under consideration for waiver or modification. Such notice shall be given no less than ten (10) calendar days prior to the meeting at which the request is to be considered.

11.8.4 Public Hearing

The Planning Commission may conduct a public hearing, if it determines that a proposed modification or waiver merits that level of public review. Notice of any such hearing shall be given in accordance with Section 11.8.3.

11.8.5 Findings Necessary for Granting of Waiver or Modification¹

The Planning Commission may approve waivers or modifications of standards upon a finding that:²

- A. The waiver will not adversely affect adjacent property owners; and,
- B. The waiver will not violate the Comprehensive Plan; and,
- C. The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant; and,
- D. Either:
 - 1. The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); or
 - 2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

11.8.6 Additional Conditions

The Commission may impose additional conditions or restrictions intended to mitigate the impact of the modification or waiver. These conditions or restrictions shall be considered as binding elements.

11.8.7 Delegation to Committee³

The Planning Commission may delegate the authority to consider and take final actions on modifications or waivers to its Land Development and Transportation Committee or other such Committee of the Commission duly created under the By-Laws of the Commission. Committee decisions may be appealed to the Commission in accordance with Section 11.7.2.

¹ See Appendix 1C for changes to this section in effect within the City of Middletown.

² See Appendix 1B for specific changes to this sentence in effect within the City of Jeffersontown.

³ See Appendix 1B and 1C for specific changes to this section in effect within the City of Jeffersontown and the City of Middletown respectively.

11.9.1 Authority to Set Fees

The fee schedule shall be set by ordinance of the legislative body providing principal funding to Planning and Design Services.

11.9.2 Authority to Establish Interim Fees

In the circumstance where no fee exists on the official fee schedule, the Planning Director is authorized to establish a review fee until such time as the legislative body adopts a revised fee schedule.

11.9.3 Fee Exemption

Applications from legislative bodies, state agencies and local government agencies shall be considered fee exempt.

11.10.1 Right of Entry

Upon representation of official credentials, any zoning enforcement officer may enter during reasonable hours any premises covered by these regulations for the purposes of determining compliance with the provisions of this ordinance or conditions established at the time of development approval.

11.10.2 Notice of Violation and Stop Use Order

Upon determining that use of property is being maintained contrary to the provisions of these regulations, the zoning enforcement officer may issue a notice of violation and order requiring such use to stop immediately. Upon receipt of a notice of violation and stop use order, the property owner or his agent, or the person so using the property shall immediately stop the use. The notice of violation and stop use order shall be given to the owner of the property or his agent, or to the person using the property. The notice shall state specifically the regulation or ordinance being violated. Notice may be given by hand delivery or by registered mail to the owner, his agent or the person using the property.

Citations

Zoning enforcement officers may issue citations in accordance with KRS 100.991 to any person or entity who fails to stop use or otherwise remedy the violation immediately as required by Part 11.10.2.

Penalties

Any person or entity who violates any provision of this Code shall be fined not less than \$10.00 nor more than \$500.00 for each violation. Each day of violation constitutes a separate offense.

11.10.3 Enforcement of Binding Elements

Enforcement of binding elements and conditions of approval shall occur in accordance with KRS 100.401 through KRS 100.419; applicable local ordinances; and applicable Planning Commission Policies and Procedures.